

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 22nd Floor
San Francisco, California 94105**

File No. RH03029826

Date: December 23, 2005

**Proposed Amendment of Sections 2632.8 and 2632.11
Optional Automobile Insurance Rating Factors**

INITIAL STATEMENT OF REASONS

INTRODUCTION

Pursuant to Insurance Code section 1861.02, subdivision (e), Insurance Commissioner John Garamendi (“Commissioner”) proposes to amend California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, sections 2632.8 and 2632.11. Insurance Code section 1861.02(e) requires that the Commissioner adopt regulations to implement the determination of automobile insurance rates in California. Insurance Code section 1861.02(a) provides that the Commissioner’s regulations must set forth the respective weight to be given to each rating factor in determining automobile rates and premiums. These regulations are also authorized by *CalFarm v. Deukmejian* (1989) 48 Cal.3d 805, 825 [258 Cal.Rptr. 161], *20th Century v. Garamendi* (1994) 8 Cal. 4th 216, 280 [32 Cal.Rptr.2d 807], and *State Farm Mutual Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1041 [12 Cal.Rptr. 3d 343], which recognize the Commissioner’s broad authority over insurance ratemaking.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION

§ 2632.8

The proposed revisions to the Commissioner’s regulations are intended to implement Insurance Code section 1861.02(a), which requires that automobile insurance rates and premiums be determined by the application of rating factors in a specified order of importance, or weight. Section 1861.02(a) establishes the order of importance as follows: a driver’s driving safety record must be the most important factor, followed by the driver’s annual miles driven, followed by the number of years of driving experience for the driver, followed by those other optional factors that the Commissioner adopts through regulation.

The current set of regulations provide that all of the optional rating factors, when averaged together, must not carry an average weight that is greater than the third mandatory factor of years of driving experience. Under that set of regulations, it is frequently the case that an individual optional rating factor carries more importance than a mandatory rating factor. The Commissioner has determined that the current regulations are not consistent with the stated purposes of Proposition 103 and section 1861.02(a) and therefore must be replaced.

The Commissioner has determined that the proposed regulations are necessary to carry out the requirements articulated in Insurance Code section 1861.02. These regulations will ensure that no individual optional rating factor adopted by regulation can carry greater importance than the driver's driving safety record, annual miles driven or years of driving experience. This method is sometimes referred to as the "individual method."

Notably, this method does not eliminate the importance of the optional rating factors. Instead, this method ensures that the individual optional rating factors will not carry more importance than the third mandatory factor of years of driving experience. The Commissioner has concluded that this method represents the better method for implementing section 1861.02. The proposed regulations, which will implement the "individual method," are reasonably necessary to achieve that end.

§ 2632.11

The proposed regulations require each insurer to revise its class plan in order to bring the insurer's rating factors into compliance with the weight ordering mandate required under the new regulations. In order to ensure that the Commissioner's regulatory changes are implemented in a fair and consistent manner, the Commissioner proposes to revise the class plan submission requirements in California Code of Regulations, title 10, section 2632.11 ("section 2632.11").

The Commissioner invites public discussion regarding the appropriate timeline and process for implementation of the weight ordering mandate in section 2632.8. The timeline and process will ensure a gradual and careful method for carrying out the proposed regulatory changes. The Commissioner invites public comment regarding the best way to ensure that insurers' class plan changes to the rating factor weights are applied to the public in a structured, fair and uniform manner.

The proposed changes to section 2632.11 are reasonably necessary to enable the Commissioner to create a uniform schedule for the implementation of the weight ordering mandate in section 2632.8. The proposed changes are also necessary to ensure that the changes to individual consumers' rates as a result of compliance with section 2632.8 result in minimal premium dislocation for affected policyholders.

IDENTIFICATION OF STUDIES

Any studies which the Department relies upon in proposing these regulation changes will be included in the rulemaking file and an opportunity for public comment will be afforded in connection with any such studies.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. The proposed regulations do not mandate the use of specific technologies or equipment or prescribe specific actions or procedures, and therefore performance standards were not considered as an alternative.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Commissioner has made an initial determination that adoption of the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations simply clarify and make specific the impact of an insurer's optional rating factors on policyholder premiums. Because automobile insurance is generally written based upon the state in which the vehicle is garaged, this regulation does not affect the ability of California insurers to compete with insurers in other states. Moreover, insurers' class plans are revenue neutral, simply reflecting the premium distribution, not the overall premium collected. The Department intends to solicit public comment regarding an appropriate phase-in process for the regulations, in order to prevent significant changes in rates. Therefore, the proposed regulations will not have a significant adverse economic impact on businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulations only affect insurance companies. Such companies are not small businesses, within the meaning of Government Code section 11342.610. (Gov. Code Section 11342.610, subd. (b), para. (2).) The proposed regulations, therefore, do not impact small businesses.